

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION

ROBIN EDMAN LOCKE,)
v.)
Plaintiff,)
BLAKE DORNING, *et al.*,)
Defendants.)
Case No. 5:07-cv-02333-RRA

MEMORANDUM OF OPINION

The magistrate judge filed a report and recommendation on April 29, 2008, recommending that this action be dismissed for failing to state a claim upon which relief can be granted, pursuant to 28 U.S.C. § 1915A(b)(1). The plaintiff filed objections to the report and recommendation on May 5, 2008, (Doc. #12) and May 16, 2008, (Doc. #13).¹ In his responses to the report and recommendation, the plaintiff alleges that his medications are not working.² (Doc. #12). However, not only does he fail to provide any specific facts to support this contention, it is clear that a negligent diagnosis or treatment of a medical

¹ Document #13 also contains a motion for appointment of counsel, which is hereby **DENIED**. In that same pleading, the plaintiff stated that he would “like to file an appeal on this case.” *Id.* As the plaintiff was advised in the magistrate judge’s report and recommendation, he may not file a direct appeal to the Court of Appeals based upon the magistrate’s recommendation. Therefore, his request to file an appeal in Document #13 was premature. Appeals may be made only from the final judgment entered in this case.

² He also repeats his complaint that he was placed in solitary confinement, but provides no further facts which would alter the magistrate judge's recommendation on the conditions of confinement claim.

condition does not constitute a wrong under the Eighth Amendment. *Estelle*, 429 U.S. at 106; *McElligot v. Foley*, 182 F.3d 1248 (11th Cir. 1999). Likewise, a mere difference of opinion between the plaintiff and the prison medical staff as to treatment or diagnosis will not, alone, give rise to a cause of action under the Eighth Amendment. *Harris*, supra at 1505.

Therefore, having carefully reviewed and considered *de novo* all the materials in the court file, including the report and recommendation and the objections thereto, the Court is of the opinion that the magistrate judge's report is due to be and hereby is ADOPTED and the recommendation is ACCEPTED. Accordingly, this action is due to be dismissed for failing to state a claim upon which relief can be granted, pursuant to 28 U.S.C. § 1915A(b)(1). A Final Judgment will be entered.

DATED this 29th day of May 2008.



INGE PRYTZ JOHNSON
U.S. DISTRICT JUDGE